

Prior case law on psychological injury.

Previous Kansas case law addresses the compensability of psychological injuries.

Boutwell v. Domino's Pizza, 25 Kan. App. 2d 110, 959 P.2d 469 (1998), states that a “traumatic neurosis” is covered under the Workers Compensation Act if it results from a covered physical injury. *Id.* at Syl. ¶ 1. Even if there is a pre-existing condition, “if a subsequent covered industrial accident aggravates, accelerates, or intensifies the disease or affliction, the worker is not to be denied compensation just because it is a preexisting condition.” *Id.* at Syl. ¶ 3.

Kansas law is that every natural consequence that flows from an injury, including a new and distinct injury, is compensable if it is a direct and natural result of the primary, initial injury. *Berger v. Hahner, Foreman & Cale, Inc.*, 211 Kan. 541, 506 P.2d 1175 (1973), following *Jackson v. Stevens Well Service*, 208 Kan. 637, Syl. ¶ 1, 493 P.2d 264; *Adamson v. Davis Moore Datsun, Inc.*, 19 Kan. App. 2d 301, 312, 868 P.2d 546 (1994). Traumatic neurosis, following physical injury and shown to be directly traceable to the injury, is compensable under the Kansas Workers Compensation Act, even though financial, marital, or other worries may have contributed to the neurosis. *Barr v. Builders, Inc.*, 179 Kan. 617, Syl. ¶ 4, 296 P.2d 1106 (1956).

To prevail on a claim for traumatic neurosis, claimant must show that she suffered a work-related injury, suffered symptoms of the traumatic neurosis, and that the neurosis is directly traceable to the physical injury. *Love v. McDonald's Restaurant*, 13 Kan. App. 2d 397, Syl. ¶, 771 P.2d 557, *rev. denied*, 245 Kan. 784 (1989).

There is no distinction between physical and psychological injuries for the purpose of determining whether a worker's disability from an injury is compensable, once the connection between the injury and the psychological condition is established. *Reese v. Gas Engineering & Construction Co.*, 216 Kan. 542, Syl. ¶ 1, 532 P.2d 1144 (1975).

What does the new act change about psychological injury claims?

With regard to psychological injuries, the new act has no provisions expressly addressing psychological injury claims. By extrapolation certain portions of the new law are likely to provoke arguments. For example, K.S.A. 2011 Supp. 44-501(e) states:

An award of compensation for permanent partial impairment, work disability, or permanent total disability shall be reduced by the amount of functional impairment determined to be preexisting. Any such reduction shall not apply to temporary total disability, nor shall it apply to compensation for medical treatment.

(1) Where workers compensation benefits have previously been awarded through settlement or judicial or administrative determination in Kansas, the percentage basis of the prior settlement or award shall conclusively establish the amount of functional impairment determined to be preexisting. Where workers compensation benefits have not previously been awarded through settlement or judicial or administrative determination in Kansas, the amount of preexisting functional impairment shall be determined by competent evidence.

So how much of the claimant's psychological impairment was preexisting?

Most if not all of claimant's neurotic impairment was preexisting is the likely testimony from defense experts, while none or merely some was preexisting, according to claimant experts.

The prevailing factor and accidental injury definitions contained in K.S.A. 2011 Supp. 44-508(f), may come into play where a claimant has any alleged predisposing psychological treatment history, and the defense may claim an underlying neurosis was merely aggravated.

MMPI and psychological testing, the results of which are subject to expert interpretation and analysis, will be used by each party to prove a different causation argument.

Not much has changed if we look to a strict construction of the statutes and the absence of any direct reference addressing proof of psychological impairments. All of these new definitions refer to proof of physical injuries, not neuroses nor psychological impairments.